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Note by the President of the Security Council

Pursuant to the request made at the 4705th meeting of the Security Council, convened on 13 February 2003, on the item entitled "The situation concerning the Democratic Republic of the Congo", the attached report of the United Nations High Commissioner for Human Rights on the situation of human rights in the Democratic Republic of the Congo is hereby circulated for the attention of the members of the Council.

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Report of the United Nations High Commissioner for Human Rights to the Security Council on the situation of human rights in the Democratic Republic of the Congo

(13 February 2003)

Introduction

1. The situation of human rights in the Democratic Republic of the Congo has been of concern to the Security Council and the subject of several pronouncements by it. In a presidential statement of 15 January 2003 the members of the Council condemned in the strongest terms the massacres and systematic violations of human rights perpetrated in the Ituri District in the eastern part of the country. They expressed their intention to continue to monitor the situation in this regard, on the basis of continuing investigations by the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and the Office of the United Nations High Commissioner for Human Rights (OHCHR).

2. This report is based on the joint efforts of OHCHR and MONUC and my visit to the Democratic Republic of the Congo from 12 to 15 January 2003. It presents the general situation of human rights in the country, highlights recent gross violations of human rights committed by the different forces operating there, and provides an update on the Kisangani massacres of 14 and 15 May 2002. The report covers the period from 18 July 2002 to 30 January 2003.

I. The situation of human rights in the Democratic Republic of the Congo as a whole

3. The human rights situation remains grave throughout the Democratic Republic of the Congo. Despite having committed themselves to political and judicial reform for the promotion of human rights, all parties to the conflict continue to carry out gross violations of human rights with impunity. There has been a widespread failure to provide minimum guarantees to the particular needs of the most marginalized and vulnerable people: women, children, the internally displaced and those affected by HIV/AIDS.

4. MONUC, OHCHR, and the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Democratic Republic of the Congo have continued to document massive violations of human rights continuing in the country, especially in areas controlled by the rebels of the Rassemblement congolais pour la démocratie, Goma (RCD-G), the Mouvement de libération du Congo (MLC) and the Union des patriotes congolais (UPC). In Government-controlled territory, concerns continue over the administration of justice because of the weakness of the judicial system. In the territories controlled by the rebels, reports continue to be received of massive human rights violations, especially in the east of the country. The Special Rapporteur is scheduled to undertake a mission from 28 February to 10 March 2003 and she will report on her findings to the Commission on Human Rights at its fifty-ninth session in late March.

5. It is in this context that I visited the country to make a first-hand assessment of the human rights situation in the light of the signing of the Pretoria Agreement of 16

December 2002. During my stay, I held consultations with a wide section of actors in Kinshasa and Kisangani, including President Kabila and members of his Government, leaders of RCD-Goma, former President Masire (the facilitator of the inter-Congolese dialogue), the international diplomatic community, MONUC, humanitarian groups and civil society representatives.

6. My overall assessment is that the prevailing human rights situation in the Democratic Republic of the Congo is alarming and a threat to the fragile peace process. Despite the conclusion of the Pretoria and other peace agreements, the ongoing war in eastern Congo is causing massive violations of human rights and terrible suffering to thousands of civilians. The fighting in the Uvira area, clashes in the Ituri District and atrocities committed in the Beni-Mambasa area have led to the displacement of thousands of people.

7. Both the Government and rebel leaders have acknowledged that there are violations of human rights. However, the impunity of perpetrators of gross human rights violations, especially high-ranking military officials, is a major obstacle to the promotion of human rights and genuine peace in the Democratic Republic of the Congo. Some of these violations constitute international crimes that could be brought before various courts, including the International Criminal Court. The Democratic Republic of the Congo ratified the Rome Statute on 30 March 2002.

8. The Military Order Court (*Cour d'ordre militaire*), an arbitrary jurisdiction that functions in Government-controlled areas, has sentenced to death and caused the execution of a large number of persons (including civilians) without any possibility of judicial review or appeal. During my discussions with President Kabila, I strongly urged him to sign the law on the abolition of the court so that it could immediately enter into force. The indiscriminate use of the death penalty by this and other judicial processes in the country is a matter of serious concern that I raised with Government officials in Kinshasa and the leadership of RCD-Goma in Kisangani.

9. The situation of human rights defenders throughout the country is yet one more cause for serious concern. Many of them are subject to harassment, arbitrary arrest and unjustified detention. While in the country I made strong representations in respect of some of those detained and I have subsequently been informed that, following my intervention, some of the human rights defenders arbitrarily detained in Kinshasa have been released.

10. The rights of children and women are violated all over the country, but especially in the rebel-controlled areas, where sexual violence against women and girls is a tool of warfare. Much emphasis was also put on the discrimination against women under Congolese law and the need to remedy this. I was informed that the recruitment of child soldiers as well as the use of women and children as forced labour continue in spite of efforts to put an end to these practices.

11. The already worrying humanitarian situation is deteriorating in view of the difficulties humanitarian groups face in reaching populations in need, many of whom have been forcibly displaced from their homes and are seeking refuge in the inhospitable forests of the eastern region. These are rebel-controlled areas. The belligerents prevent the humanitarian workers from crossing their respective zones of control. Ensuring safe access for humanitarian workers is especially crucial given the large number of internally displaced persons.

12. The continued plundering of natural resources and State revenues remains a destabilizing factor and underpins gross violations of human rights. The rapidly deteriorating state of the economy, exacerbated by the continuing conflict, is also a cause for concern. The dramatic reduction of household incomes has led to extortion by magistrates, soldiers, policemen, teachers, school administrators, doctors and nurses, thus rendering the entire public administration ineffective.

II. Highlights of recent gross human rights violations

13. Against this background I now set out some of the specific atrocities which have recently been perpetrated in the territories controlled by the Government and rebels.

A. Territories under the control of the Government

14. Notwithstanding the stated intention of the Government of the Democratic Republic of the Congo to improve the human rights situation in the territory under its control, human rights violations persist. The detention centres, notorious for their treatment of detainees, are still open despite a presidential order to close them. Prisons are deplorable and extremely overcrowded. Prominent journalists have been arbitrarily detained for speaking out on human rights, constitutional and rule of law issues.

15. In spite of a presidential decree liberalizing the activities of political parties, as well as the resolutions unanimously adopted at Sun City, members of some political parties are still being subjected to arbitrary arrest and detention and are prohibited from assembling. These issues have been raised by MONUC and my Office with the Minister of Human Rights, who has promised to take prompt action in redressing the situation. I also raised these matters in my meetings with the Congolese authorities.

16. Among the recent violations attributed to the Government forces is the incident which occurred in Ankoro, in the Province of Katanga, from 10 to 18 November 2002 during fighting between the Mai-Mai (a militia group) and the Forces armées congolaises (FAC). According to information gathered by the joint MONUC/OHCHR team, more than 100 persons were killed by the Government forces (see report of the joint team to Ankoro from 26 to 28 November 2002). Moreover, over 1,000 houses were burned while several cases of destruction, pillage and inhumane treatment were recorded. Commandant Emile Twabungu appears responsible for this incident as soldiers from the 95th Brigade of FAC based in the region, and who appear to have perpetrated these acts, are under his command.

17. On 7 January 2003, the Military Order Court handed down death sentences on 30 of the 150 persons initially accused of complicity and/or involvement in the assassination of the late President Laurent Desiré Kabila. During my meeting with the Congolese authorities at the highest level, including with President Kabila, I put to them issues relating to due process at the trials and the use of the death penalty. They have promised to take these into account in making a final decision on the condemned persons.

B. Territories under rebel control

18. On 31 December 2002, a MONUC Special Investigation Team went to the Beni area to investigate allegations that serious human rights violations — arbitrary executions, rape, torture and forced disappearances — had occurred in Mambasa town and in the villages on the axes Mambasa-Mangina and Mambasa-Erengeti. The Investigation Team confirmed a pattern of looting, killing and rape as tactics of war by MLC/Rassemblement congolais pour la démocratie-National (RCD-N) combined military forces carried out in October 2002 and during the fighting in December 2002 when they were assisted by UPC soldiers. The summary executions targeted the Nande ethnic group and Pygmies, who were forced to flee to the forest for the first time to escape persecution for their alleged collaboration with the Rassemblement congolais pour la démocratie/Mouvement de libération (RCD-ML).

19. The victims reported several cases of mutilation followed by acts of cannibalism. The Special Investigation Team interviewed over 500 internally displaced persons in Beni, Butembo, Mangina, Oicha and Erengeti. The most common human rights violations, according to testimonies, consisted of arbitrary executions (220), rapes (95), forced disappearances (122) and missing people, including children (102), torture and ill-treatment (32 cases) and over 100 cases of abduction of people used for forced labour (see report of the Special Investigation Team to Beni, Butembo, Mangina, Oicha and Erengeti, from 31 December 2002 to 20 January 2003).

20. Witnesses also reported around 15 cases of cannibalism preceded by corporal mutilations and sectioning of internal body parts. Three Catholic priests were forced to follow the troops on their advance toward Mangina, witnessing on the way the mutilation of the sexual organs of all dead bodies on the road. The systematic looting of all buildings, including hospitals and churches as well as homes, was confirmed during the visit of the team in Mambasa and Mandima.

21. The planned military operation was called "Effacer le tableau". Its purpose seemed to be for MLC/RCD-N forces to go from town to town destroying everything they could lay their hands on. Some soldiers were allegedly seen with T-shirts printed with "effacer le tableau", which further suggests that the nature of the operation was carefully premeditated. Soldiers from this force confirmed they had been sent by Jean-Pierre Bemba (MLC) and Roger Lumbala (RCD-N). The force was a mix of ex-FAR soldiers from Equateur, who spoke only Lingala, and other recruits coming mainly from Isiro and in a smaller number from Ituri (although some Ugandan and Portuguese speakers were identified). There were also three sub-groups calling themselves Foudre, Dragon and Tigre. The so-called "effaceurs" had received the order to attack on the double axis of the town of Mambasa and Eringeti in order to regroup at Beni and take all the territory controlled by RCD-ML.

22. Following the Security Council's request in its presidential statement of 15 January 2003, efforts have been made by MONUC and OHCHR to follow up on MLC action to make those responsible for the massacres accountable. It will be recalled that, after first denying the allegation as a campaign of calumny orchestrated by his enemies, Mr. Bemba admitted the veracity of the charges and promised to prosecute those suspected of having committed the crimes. According to reports, 27 officers thus far have been arrested and their trial is scheduled for 18

February 2003. However, my position is that justice can and should only be dispensed by legally recognized authorities.

23. The crisis around Beni/Mambasa has led to the displacement of well over 100,000 people. Early in January, in close partnership with non-governmental organizations, the Office for the Coordination of Humanitarian Affairs, the World Food Programme and MONUC participated in humanitarian assessment missions to the area. By mid-January, many of the displaced had begun to return towards Mambasa and Eringeti, but large numbers had dispersed into the neighbouring forest where access is difficult. Food insecurity was a predominant concern. The World Food Programme delivered 213 tons of food on 4 January 2003. Humanitarian teams assessed that, if the security situation did not improve, displaced persons would be unable to tend their crops and longer-term food availability would be even more problematic.

24. Two recent missions to Bunia (carried out by MONUC from 28 to 30 January 2003 and by OHCHR on 3 and 4 February 2003) confirmed gross violations of human rights including group rapes of women, extrajudicial executions and looting and burning of homes. These abuses occurred between August 2002 and January 2003. In Nyakunde, well over 2,000 killings were reported and the population has fled to the forest. The missions also confirmed the existence of scores of mass graves in Bunia and its environs. Similar atrocities have been reported in Kindu. Reports of group rapes being carried out on a frequent basis have been confirmed in North and South Kivu.

25. According to information received from non-partisan sources, a humanitarian/human rights crisis is unfolding in Mahagi territory, owing to military attacks and human rights abuses carried out by joint Union des patriotes congolais-reconciliation et paix (UPC-RP)/Uganda People's Defence Forces (UPDF) troops. For several years, the District of Ituri has been wracked by violence involving primarily the Lendu and the Hema communities and the situation there remains highly explosive.

26. In the areas controlled by UPC-RP since August 2002, the human rights situation has deteriorated significantly. Information gathered reveals that persecution on ethnic and tribal grounds, extortion, rape and other forms of sexual violence against women, extrajudicial executions and forced recruitment of children are being committed by UPC-RP military personnel. This situation has caused thousands of civilians to flee south from Bunia to Irumu, Mambasa and Beni, thereby increasing the number of internally displaced persons in this region. Following the December 2002 events in Mambasa, these persons had to flee southwards for a second time with their host community, towards the towns of Erengeti and Oicha in the Beni region. Mass graves are reported to have been identified in several places in Bunia, namely at Camp Ndoromo, at the residence of the former governor, as well as near "Hôpital général" and in Mudzipela.

27. The past months in the District of Ituri have been marked by massive human rights violations. In the Bunia area, manhunts and reprisals on ethnic grounds continue to be reported. Some testimonies suggest that Thomas Lubanga, the President of UPC-RP, is fuelling the crisis. It should be noted that Mr. Lubanga did not participate in the inter-Congolese dialogue held in Sun City, hence he is not a party to the Pretoria Agreement. Many observers attribute his recent actions to one

of frustration and recommend that a way be found to involve him in the Ituri pacification process.

C. Representations to Congolese leaders

28. My response to the different groups I met during my mission was very clear. I expressed strong concern about the lack of respect for human rights, particularly with regard to the serious violations that have occurred recently in various parts of the country, the exacerbation of ethnic conflicts and the widely reported atrocities committed against civilians. I reminded the belligerents of their responsibility to protect the civilian population in areas under their control. Furthermore, I emphasized that ending the culture of impunity is an indispensable condition for reconciliation and lasting peace in the country; and I reiterated that the international community would seek to bring all perpetrators of human rights violations to justice. I repeatedly stressed the importance of the Pretoria Agreement as offering a timely opportunity for the improvement of the rule of law and the human rights situation in the Democratic Republic of the Congo.

29. Finally, I called upon all parties to respect human rights and international humanitarian law and to cooperate in the immediate and unrestricted implementation of the Pretoria Agreement.

III. Follow-up to the massacres of 14 May 2002 in Kisangani

30. Last July, my predecessor reported on the massacres of 14 May 2002 in Kisangani and the Council asked to be kept informed about follow-up action. My office in the Democratic Republic of the Congo, with the assistance of MONUC, has undertaken several missions to Goma and Kisangani, as a result of which I can report the following:

- Although the leadership of the Rassemblement congolais pour la démocratie-Goma claimed to have set up a general commission of inquiry in the very early stages of the events and to have ordered a judicial inquiry by the Office of the Military Prosecutor of Kisangani, information gathered indicates that the Commission of Inquiry has never visited Mangobo Commune where most of the killing of civilians occurred.

- The RCD leadership promised to prosecute all suspects in respect to whom sufficient evidence was gathered, including public officials mentioned in United Nations reports. According to its Chief of the Department of External Relations, the trials would be open and suspects would have the right to defend themselves. On 27 December 2002, the Conseil operationnel de guerre, meeting in Kisangani, held a short trial of a small number of military and police officers alleged to have masterminded the massacres of 14 May 2002. Quite apart from the questionable legitimacy of such courts and proceedings, the list of the accused did not include any of the well-known high-ranking military officers that eye witnesses and human rights groups had identified as having directed or led the massacres, nor did it include any high-level civilian officials. Instead, those arraigned were mostly persons accused of genocide, attempted genocide, or incitation to ethnic hatred in connection with the killing of a small number of Rwandans in the early stages of the events.

31. During my meeting with leaders of RCD-Goma in Kisangani on 14 January 2003, I raised my strong concerns about the lack of will to bring perpetrators of the killings to justice. I handed over a list of the three senior RCD-Goma military commanders accused, noting that two of them had been promoted. I requested that they be immediately relieved of their command functions until conditions existed to carry out a proper investigation and trial by a legally recognized authority. The officers are :

(a) Commandant Amisi ("Tango-Four"), Deputy Chief of Staff of ANC, implicated in the events in Kindu;

(b) Colonel Bernard Byamungu, commandant of the 8th Brigade, also cited as being behind the atrocities committed in Kindu, including public summary execution of three soldiers on the streets of Kindu;

(c) Commandant Laurent Nkunda Mihigo, ex-Commandant 7th Brigade, Kisangani, now in Kasai.

Conclusion

32. From the information I have presented, it will be seen that widespread violations of human rights continue to be perpetrated in the Democratic Republic of the Congo with impunity. There will be a continuing need for the Security Council to exert all possible pressure on the Government and the other belligerents and their foreign supporters, notably Rwanda and Uganda, to put an immediate end to the human rights violations and to the culture of impunity, and to actively protect civilian populations in areas under their influence and control. I urge the Security Council to activate the means to bring those responsible to justice. Some of the persons whose names are mentioned in this report have been promoted to higher ranks by RCD-Goma in anticipation of the reunification of the Congolese armed forces. Other officers, notably from MLC and from government forces, have likewise been named in this report. Efforts must be made to prevent their integration into the post-Pretoria processes until they have been cleared through a credible judicial process or inquiry. All commanders must be held responsible for gross violations committed by fighters under their control. Serious consideration should be given to the establishment of an international commission of inquiry to investigate serious human rights violations committed by all sides.

33. Having ratified the Rome Statute, the Government of the Democratic Republic of the Congo should be pressed to pass the necessary implementation legislation so that those who commit war crimes or crimes against humanity may be prosecuted by the international court, should a new national jurisdiction — which would clearly be preferable — be unable to do so.

34. The Truth Commission, to be established pursuant to the resolution adopted by all parties in Sun City, will be a useful instrument in promoting reconciliation. The Commission, in addition to creating a historical record, may conduct investigations, take testimony from witnesses, victims and perpetrators and recommend reforms needed to prevent the recurrence of abuses. I would urge the Security Council to call for the effective implementation of the sections of the Pretoria Agreement calling for a National Observatory on Human Rights and a Truth and Reconciliation Commission.

Abbreviations

RCD-Goma	Rassemblement congolais pour la démocratie, established in August 1998, led by Adolphe Onusumba and backed by Rwanda
MLC	Mouvement de libération du Congo, created in September 1998, led by Jean-Pierre Bemba and backed by the Ugandan military
RCD-ML	Rassemblement congolais pour la démocratie-Mouvement de libération, created in 1999 (by breaking off from RCD-Goma), led by Mbusa Nyamwissi and backed by the Ugandan military
RCD-N	Rassemblement congolais pour la démocratie-National, created in 2000 (by breaking off from RCD-Goma), led by Roger Lumbala and backed by the Ugandan military
UPC-RP	Union des patriotes congolais-reconciliation et paix, created in August 2002 (dissident group of RCD-ML), led by Thomas Lubanga, supported at the beginning by the Ugandan military; currently maintaining relations with RCD-Goma and Rwanda
ANC	Armée nationale congolaise (army of the rassemblement congolais pour la démocratie-Goma)
FAC	Forces armées congolaises (army of the Democratic Republic of the Congo)
FAR	Forces armées rwandaises
FAZ	Forces armées zaïroises
APC	Armée du peuple congolais (army of the rassemblement congolais pour la démocratie-ML)
UPDF	Uganda People's Defence Forces